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ABSTRACT

Title IX of the Education Amendemtns of 1972 bars sex discrimination in any academic, extracurricular, research, occupational training or other educational program operated by an organization or agency that receives or benefits from federal aid. The regulation (45 CFR Part 86) for Title IX summarized in this document falls into five categories: (1) general matters related to discrimination on the basis of sex; (2) admissions; (3) treatment of students once they are admitted, including housing and facilities, courses and other educational activities, counseling, student financial aid, student health and insurance benefits, marital or parental status, athletics, and textbooks; (4) employment; and (5) enforcement procedures. (Author/KE)

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SUMMARY OF THE REGULATION* FOR TITLE IX EDUCATION AMENDMENTS OF 1972

Title IX of the Education Amendments of 1972 says:

"No person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. . . ."

With certain exceptions, the law bars sex discrimination in any academic, extracurricular, research, occupational training or other educational program (preschool to postgraduate) operated by an organization or agency which receives or benefits from federal aid. Exempted from the provisions of Title IX are schools whose primary purpose is training for the U.S. military services or the merchant marine and educational institutions controlled by religious organizations whenever compliance with Title IX would be contrary to their religious beliefs. In addition, the "Bayh Amendment" to Title IX exempts the membership policies of the Girl and Boy Scouts, the YMCA and YWCA, Campfire Girls and other single-sex "youth service organizations" whose members are chiefly under age 19. This special exemption does not apply to recreational youth groups such as Little League. Also exempted by the amendments are university-based social fraternities and sororities.

Basically, the regulation for Title IX falls into five categories: general matters related to discrimination on the basis of sex, admissions, treatment of students once they are admitted, employment and procedures.

The following summary was adapted by PEER from a summary prepared by the Resource Center on Sex Roles in Education of the National Foundation for Improvement of Education.

GENERAL PROVISIONS § 86.3 - 86.9

Each recipient of federal education aid must evaluate its current policies and practices to determine whether they comply with Title IX. Each recipient must then take whatever steps are necessary to end discrimination. Institutions must keep a description of these steps on file for three years, and they must complete the evaluation and steps to overcome the effects of bias within one year of the date the regulation takes effect.

The regulation also requires that recipients adopt and publish grievance procedures to resolve student and employee complaints alleging discrimination prohibited by Title IX.

ADMISSIONS § 86.21-86.23

The regulation bars sex discrimination in admissions to certain kinds of institutions: those of vocational, professional, graduate, and public coeducational undergraduate institutions. Admissions to private undergraduate institutions are exempt, including admissions to private, undergraduate professional and vocational schools. HEW will look at the admissions practices of each "administratively separate unit" separately.

Specifically, the regulation bars limitations (i.e., quotas) on the number or proportion of persons of either sex who may be admitted, preference for one sex, ranking applicants separately by sex, and any other form of differential treatment by sex.

The recipient may not use a test or other criterion for admission which adversely affects any person on the basis of sex unless the test or criterion is shown to predict validly successful completion of the educational program, and unbiased alternatives are not available. Also prohibited are rules concerning parental, family, or marital status of students which make distinctions based on sex; discrimination because of pregnancy or related conditions; and asking an applicant's marital status. Recipients can ask an applicant's sex if the information is not used to discriminate.

The recipient must make comparable efforts to recruit members of each sex, except when special efforts to recruit members of one sex are needed to remedy the effects of past discrimination.

* 45 CFR Part 86. The text appears in the *Federal Register,* June 4, 1975, page 24128.

PEER, The Project on Equal Education Rights, is a project of the NOW Legal Defense and Education Fund. Funded by the Ford Foundation to monitor enforcement progress under Federal law forbidding sex discrimination in education. 1522 Connecticut Ave., N.W., Washington, D.C., 20036. Project Director: Holly Knox. Associate Director: Clelia Steele. Staff: Mary McKenzie, Robin Gordon, Lynda Weston, Cheryl Andrews.

SUMMARY (continued)

TREATMENT OF STUDENTS § 86.31 - 86.42

General coverage § 86.31

Although some schools are exempt from coverage with regard to admissions, all schools must treat their admitted students without discrimination on the basis of sex. Briefly, the treatment of students section covers courses and extracurricular activities (including student organizations and competitive athletics), benefits, financial aid, facilities, housing, rules and regulations (including rules of appearance), and research. A student may not be limited in the enjoyment of any right, privilege, advantage or opportunity based on sex.

The regulation forbids a recipient to aid or perpetuate sex discriminiation by providing "significant assistance" to any agency, organization or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees (with some exceptions, including the membership policies of social fraternities and sororities, Boy and Girl Scouts, YMCA and YWCA). Significant assistance includes the provision of a facility or faculty sponsor.

Housing and Facilities § 86.32 and 86.33

Institutions may provide housing separately for men and women. However, housing for students of both sexes must be as a whole:

- proportionate in quantity to the number of students of that sex that apply for housing, and
- comparable in quality and cost to the student.

Institutions may not have different housing policies for students of each sex (for example, if a college allows men to live off campus, it must allow women too).

Toilets, locker rooms and shower facilities may be separated on the basis of sex, but these facilities must be comparable for students of both sexes.

Courses and other Educational Activities § 86.34 and 86.35

Courses or other educational activities may not be provided separately on the basis of sex. An institution may not require or refuse participation in any course by any of its students on that basis. This includes physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

However, sex education is an exception: portions of elementary and secondary school classes dealing with human sexuality may be separated by sex.

In physical education classes, students may be separated by sex *within* coeducational classes when playing contact sports. Contact sports include wrestling, rugby, ice hockey, footbali, basketball, and any other sport "the purpose of major activity of which involves bodily contact".

Choruses may be based on vocal range or quality and may result in single-sex or predominantly single-sex choruses.

Local school districts may not, on the basis of sex, exclude any person from:

- any institution of vocational education;
- any other school or educational unit, unless the school district offers the other sex courses, services and facilities which are comparable to those offered in such schools, following the same policies and admission criteria.

Counseling § 86.36

A recipeint may not discriminate on the basis of sex in counseling or guiding students.

Whenever a school finds that a class has a disproportionate number of students with one sex, it must take whatever action is necessary to assure itself that sex bias in counseling or testing is not responsible.

A recipient may not use tests or other appraisal and counseling materials which use different materials for each sex or which permit or require different treatment for students of each sex. Exceptions can be made if different materials used for each sex cover the same occupations and they are essential to eliminate sex bias.

Schools must set up their own procedures to make certain that counseling and appraisal materials are not sex-biased. If a test does result in a substantially disproportionate number of students of one sex in a course of study or classification, the school must take action to ensure that bias in the test or its application is not causing the disproportion.

Student Financial Aid § 86.37

The regulation covers all forms of financial aid to students. Generally, a recipient may not, on the basis of sex:

- provide different amounts or types of assistance, limit eligibility, apply different criteria, or otherwise discriminate;
- assist through solicitation, listing, approval, provision of facilities, or other services any agency, organization or person which offers sex-biased student aid;
- employ students in a way that discriminates against one sex, or provide services to any other organization which does so.

There are exceptions for athletic scholarships and single-sex scholarships established by will or trust.

Athletic scholarships. An institution which awards athletic scholarships must provide "reasonable opportunities" for both sexes, in proportion to the number of students of each sex participating in inter-

scholastic or intercollegiate athletics. Separate athletic scholarships for each sex may be offered in connection with separate male/female teams to the extent consistent with both the section on scholarships and the section on athletics (86.41).

Scholarships for study abroad. The regulation exempts discriminatory student assistance for study abroad (such as Rhodes Scholarships), provided that a recipient which administers or helps to administer the scholarship awards makes available reasonable opportunities for similar studies for the other sex.

Single sex scholarships. An institution may administer or assist in the administration of scholarships and other forms of student financial aid whenever a will, trust, or bequest specifies that the aid can only go to one sex, as long as the overall effect of making sex-restricted awards is not discriminatory.

To ensure this, institutions must:

- select financial aid recipients on the basis of nondiscriminatory criteria, not the availability of sex-restricted scholarships;
- allocate sex-restricted awards to students already selected in such a fashion; and
- ensure that no student is denied an award because of the lack of a sex-restricted scholarship.

Student Health and Insurance Benefits § 86.39

Student medical, hospital, accident or life insurance benefits, services, or plans may not discriminate on the basis of sex. This would not bar benefits or services which may be used by a different proportion of students of one sex than of the other, including family planning services.

Any school which provides full coverage health services must provide gynecological care.

Marital or Parental Status § 86.40

The regulation bars any rule concerning a student's actual or potential parental, family, or marital status which makes distinctions based on sex.

A school may not discriminate against any student in its educational program, including any class or extracurricular activity, because of the student's pregnancy, childbirth, false pregnancy, miscarriage, or termination of pregnancy, unless the student requests voluntarily to participate in a different program or activity.

If a school does offer a voluntary, separate education program for pregnant students, the instructional program must be comparable to the regular instructional program.

A school may ask a pregnant student to have her physician certify her ability to stay in the regular education program only if it requires physician's certification for students with other physical or emotional conditions.

Recipients must treat disabilities related to pregnancy the same way as any other temporary disability in any medical or hospital benefit, service, plan or policy which they offer to students. Pregnancy must be treated as justification for a leave of absence for as long as the student's physician considers medically necessary. Following this leave, the student must be reinstated to her original status.

Athletics § 86.41

General coverage. The regulation says that no person may be subjected to discrimination based on sex in any scholastic, intercollegiate, club or intramural athletics offered by a recipient of federal education aid.

Separate teams and contact sports. Separate teams for each sex are permissible in contact sports or where selection for teams is based on competitive skill. Contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and any other sport "the purpose or major activity of which involves bodily contact."

In *noncontact* sports, whenever a school has a team in a given sport for one sex only, and athletic opportunities for the other sex have been limited, members of the other sex must be allowed to try out for the team.

Equal opportunity. A school must provide equal athletic opportunity for both sexes. In determining whether athletic opportunities are equal, HEW will consider whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes. The Department will also consider (among other factors): facilities, equipment, supplies, game and practice schedules, travel and per diem allowances, coaching (including assignment and compensation of coaches), academic tutoring, housing, dining facilities, and publicity.

Equal expenditures are not required, but HEW "may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex."

Adjustment period. Elementary schools must comply fully with the section covering athletics "as expeditiously as possible" but no more than one year from the effective date of the regulation. Secondary and post-secondary institutions have three years from the regulation's effective date to comply fully.

Textbooks § 86.42

The regulation does not require or abridge the use of particular textbooks or curriculum materials.

EMPLOYMENT § 86.51 - 86.61

General Provisions § 86.51 - 86.55

All employees in all institutions are covered, both full-time and part-time, except those in military

schools, and those in religious schools to the extent compliance would be inconsistent with the controlling religious tenets.

In general, the regulation prohibits: discrimination based on sex in employment, recruitment, and hiring, whether full-time or part-time, under any education program or activity which receives or benefits from federal financial aid. It also bars an institution from entering into union, employment agency, or fringe benefit agreements which subject individuals to discrimination.

An institution may not limit, segregate, or classify applicants or employees in any way which could adversely affect any applicant's or employees' employment opportunities or status because of sex.

The regulation prohibits sex discrimination in all aspects of employment, including employment criteria, advertising and recruitment, hiring and firing, promotion, tenure, pay, job assignments, training, leave, and fringe benefits.

Fringe benefits § 86.56

Fringe benefit plans must provide *either* for equal periodic benefits for male employees *or* equal contributions for both sexes. Retirement plans may not establish different retirement ages for employees of each sex.

Marital status and pregnancy § 86.57

An institution may not apply any employment policy concerning the potential marital, parental or family status of an employee or employment applicant which makes distinctions based on sex.

An institution may not discriminate in employment on the basis of pregnancy or related conditions. A temporary disability resulting from these conditions must be treated as any other temporary disability for all job-related purposes, including leave, seniority, reinstatement and fringe benefits. If the employer has no temporary disability policy, pregnancy and related conditions must be considered a justification for leave without pay and the employee reinstated to her original or comparable status when she returns from leave.

Effect of state and local laws § 86.58

The obligation to comply with this regulation is not precluded by any state or local laws.

ENFORCEMENT PROCEDURES §86.71*

Pending HEW's final issuance of a consolidated procedural regulation dealing with Title IX and other civil rights laws, the Department will follow the procedures of Title VI of the Civil Rights Act of 1964 to implement the Title IX regulation. Under these procedures HEW conducts compliance reviews — broad-based investigations of school districts or universities initiated by HEW. HEW will also investigate complaints submitted by individuals or groups.

The Title IX procedures require educational institutions to keep records demonstrating whether they are complying with the law's requirements. Records must be available to HEW upon request.

Discrimination complaints must be filed with HEW within 180 days of the date of discrimination. Aside from this requirement, no specific time limits are set on any other proceedings. If after investigation, HEW finds that discrimination exists, it can try to achieve voluntary compliance by the institution. Failing this, HEW may then begin administrative hearings which could lead to termination of federal financial assistance.

HEW can also refer the matter to the Department of Justice for possible federal prosecution or to state or local authorities for action under state or local laws. Under the provisions for administrative hearings, recipient institutions (but not the complainant) are granted the right to counsel and the right to appeal.

*The full text of these procedures appears at 45 CFR §§ 80.6 - 80.11 and 45 CFR Part 81.

The regulation for Title IX went into effect on July 21, 1975. Copies of the regulation can be obtained by writing the Office for Civil Rights, Department of Health, Education and Welfare, Washington, D.C. 20202.

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